



CITY OF PHILADELPHIA

BOARD OF ETHICS
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**Philadelphia Board of Ethics
Non-public¹ General Counsel Opinion No. 2013-503**

April 11, 2013

Kevin Greenberg
Flaster/ Greenberg PC
Four Penn Center
1600 John F. Kennedy Boulevard, 2nd floor
Philadelphia, PA 19103

**Re: Lobbying Code Applied to Provision of Tax Collection-Related
Services and Advice Pursuant to a City Contract**

Dear Mr. Greenberg:

You have requested an advisory opinion on behalf of your client Linebarger, Goggan, Blair & Sampson, LLP (“Linebarger”) concerning whether the City Lobbying Code requires it to register as a lobbyist. As discussed below, Linebarger is not required to register as a lobbyist when it provides collection-related advice and services to the City pursuant to a contract with the Law Department.

I. Jurisdiction and Relevant Law

The Board of Ethics has jurisdiction to administer and enforce Philadelphia’s lobbying law, which requires lobbyists, lobbying firms, and principals to register annually with the Board. Code §§20-1202(1), 20-1206(1). The Board is authorized to render advisory opinions regarding the lobbying law, including opinions for entities seeking to determine whether registration is required. Code §20-1206(2); *see also* Charter §4-1100. Board of Ethics Regulation 4 describes the procedures for seeking an

¹ Although this opinion was originally non-public, the original opinion with references to the opinion being non-public is being made public by agreement of the requestor.

advisory opinion and for requesting reconsideration of a General Counsel opinion. Board Regulation 4, ¶4.24.

II. Facts Provided

You provided the facts that are restated here. Linebarger is a law firm that specializes in collections on behalf of state and municipal governments. Linebarger has represented the City of Philadelphia in a number of collection aspects since 2004. Although the firm has more than 2200 clients, by far its largest local client is the City. Over its many years of representing the City, Linebarger has become the go-to expert on municipal collection in Philadelphia. As part of its representation, Linebarger has regularly been asked to advise various units of the City on policy and the laws and civil procedures pertaining to collections.

Linebarger, and particularly its lead Philadelphia partner Sharon Humble, are typically consulted when the City is formulating an opinion on proposed state and municipal legislation, when new regulations are being proposed, and even when ideas are very preliminarily on a drawing board. Linebarger is regularly asked for creative ideas and is looked to as a source of national expertise on best practice. Linebarger's forms, including those it crafted to give to residents, have literally been copied and rebranded by other counsel. Over the last decade, Linebarger has not only advised the City as it has crafted a series of collection policies, it has been instrumental in developing the model. During its representation of the City, the City units that have sought material advice from Linebarger have included, but are not limited to, the Department of Revenue, the Office of the Finance Director, the Law Department, the Mayor's Office, dozens of City Council members, and the Office of the Sheriff.

Linebarger's contract is with the Law Department and, like the Law Department, Linebarger views the City as a whole as its client for ethics purposes. While Linebarger regularly interacts with the Revenue Department, for example, Linebarger's client direction comes from the Law Department. Linebarger, like almost all Law Department-engaged counsel, has its duties run to the City as a whole. Linebarger is obligated to keep confidential client information it learns from both Administration and City Council sources and has the City, and not the Administration, as its client for conflict purposes.

Linebarger is compensated for its services, but it is paid solely on a contingent fee model based on its collections. There is no specific or additional charge to the City for policy, civil procedures, and best practices advice proffered by Linebarger. Linebarger is not paid for its advice but receives, instead, commissions on collections. Linebarger works with all relevant components of its client to craft the optimal policies for the City for no additional compensation.

Linebarger is a City-retained expert that is being consulted in a collaborative effort. Linebarger is not engaged to specifically influence Council or the Administration to take a specific position. The engagement is directed at the collection of taxes. While there may be a difference on a policy opinion between a member of the Administration and a member of Council, and each may draw their own lessons from the expertise shared by Linebarger, Linebarger is not engaged to alter the opinions of one branch to conform with the opinions of another.

III. Questions Presented & Brief Answers

1. Whether the representation described, including the policy advice provided to the Administration and Council, constitutes “lobbying” and, if so, on whose behalf? *Under the facts provided, no.*
2. Whether the representation described requires Linebarger to register as a lobbyist and report to the Ethics Board under the City Lobbying Code at Chapter 20-1200 of the Philadelphia Code? *Under the facts provided, no.*
3. If registration is required, what is the process for redacting confidential client information that is otherwise regulated by the Code of Professional Responsibility? *Not applicable. See responses to Questions 1 & 2.*
4. Given that there is no separate payment or fees for this advice, what will trigger the obligation to register? What office expenses are required to be disclosed, as all office expenses pertain solely or primarily to other work? *Not applicable. See responses to Questions 1 & 2.*

IV. Discussion

According to the facts you have provided, Linebarger’s various activities advising and working with City departments on tax collection issues are conducted pursuant to the firm’s representation of the City and pursuant to a contract with the City Law Department. As such, Linebarger is not subject to the registration and reporting requirements of the City’s lobbying law under the exemption for performing services pursuant to an existing contract. See Code §20-1204(14)(g); Board Regulation 9, ¶9.24(M)(7).²

Although your request letter cites several other exemptions from lobbying registration and reporting, the existing contract exemption is applicable to the facts provided. You also reference Board Opinion 2012-003, which is distinguishable from

² Note that communications concerning extensions of an existing contract with the City are not covered by this exemption. See Board Regulation 9, ¶9.24(N).

Linebarger's circumstances. That Opinion addresses a situation in which the Administrative and Executive branch of City government and Philadelphia Gas Works ("PGW") were subject to lobbying registration and reporting requirements when they acted as principals and hired two firms to lobby City Council and the Gas Commission to consider the merits of a potential sale of PGW. Board Opinion 2012-003. The Board concluded that the Code Section 20-1204(7) exemption for government employees acting in an official capacity does not apply when a City government entity hires an outside lobbyist or lobbying firm. *Id.* at 6-7. By contrast, Linebarger has been engaged by the City to provide tax collection-related services and expertise to the City and has not been hired by the City to conduct any lobbying activity.

V. Conclusion

Thank you for being concerned about compliance with the City's lobbying law and for seeking advice. Advisory opinions are very fact-specific, and this Opinion is predicated on the facts you provided as stated here. If you have questions about particular situations that vary from the facts presented here or that are related to principles described only generally in this Opinion, you should ask for specific advice on the application of the Lobbying Code to those particular facts. Others who want to know whether they are required to register under the City's lobbying law should seek and rely on an advisory opinion that addresses their specific situations.

Since you requested a non-public opinion, this original Opinion will not be made public. As required by the City Code, a version of this Opinion that is redacted to conceal facts that are reasonably likely to identify the requestor will be published on the Board's website. Please let me know if you have any questions or concerns.

BY THE PHILADELPHIA BOARD OF ETHICS

Maya Nayak
Associate General Counsel

cc: Michael H. Reed, Esq., Chair